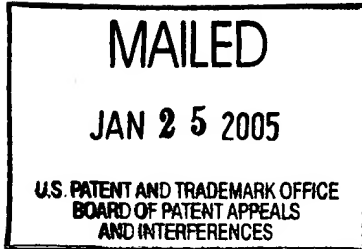


The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 40

UNITED STATES PATENT AND TRADEMARK OFFICE



BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte YI-HWA CHU

Appeal No. 2004-2150
Application No. 09/326,308

ON BRIEF

Before COHEN, FRANKFORT and MCQUADE, Administrative Patent Judges.

MCQUADE, Administrative Patent Judge.

DECISION ON APPEAL

Yi-Hwa Chu originally took this appeal from the final rejection of claims 20 through 27 and 36 through 43, all of the claims pending in the application. As the examiner has since withdrawn the only rejections of claims 26, 27, 39 and 40,¹ the appeal as to these claims is hereby dismissed, leaving for review the standing rejections of claims 20 through 25, 36 through 38

¹ See n.3, infra.

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and 41 through 43. Presumably, claims 26, 27, 39 and 40 now stand objected to as depending from rejected base claims.

THE INVENTION

The invention relates to a device for raising and lowering a vehicle window. Representative claim 20 reads as follows:

20. A device for raising and lowering a vehicle window, comprising:

a cable having two ends;

a drum having a plurality of grooves on an outer surface of the drum for receiving portions of the cable, a first end of the drum having a receiver that receives one of the cable ends, a second end of the drum including a flange extending radially outward further than the grooves, the flange including an opening extending axially through the flange, and

a hood having a sidewall partially surrounding the drum, the sidewall and a portion of the drum flange cooperating to form an arcuate passage, a second end of the cable being received through the arcuate passage and into the opening in the flange.

THE PRIOR ART

The references relied on by the examiner to support the rejections on appeal are:

Sessa	4,191,060	Mar. 04, 1980
Pages	6,253,491	Jul. 03, 2001

THE REJECTIONS

Claims 20 through 25, 36 through 38 and 41 through 43 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Pages in view of Sessa.

Claims 20 through 25, 36 through 38 and 41 through 43 stand rejected under the judicially created doctrine of obviousness-type double patenting over claims 4 through 6, 8 and 13 in the Pages patent in view of Sessa.²

Attention is directed to the main and reply briefs (Paper Nos. 32 and 35) and the final rejection and answer (Paper Nos. 18 and 34) for the respective positions of the appellant and the examiner regarding the merits of these rejections.³

² The record indicates that the instant application and the Pages patent are commonly owned.

³ In the final rejection, the examiner based the § 103(a) rejection on Sessa in view of Pages. The switch in the answer to Pages in view of Sessa has not prejudiced the appellant to any meaningful extent. Also, the final rejection contained a number of additional rejections: claims 20 through 27 and 36 through 43 under 35 U.S.C. § 112, second paragraph, as being indefinite; claims 36 through 38 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,421,299 to Hess; and claim 36 under 35 U.S.C. § 102(e) as being anticipated by Pages. Since the examiner has not restated these rejections in the answer, we presume that they have been withdrawn (see Ex parte Emm, 118 USPQ 180, 181 (Bd. App. 1957)).

DISCUSSION

I. The 35 U.S.C. § 103(a) rejection of claims 20 through 25, 36 through 38 and 41 through 43 as being unpatentable over Pages in view of Sessa

Pages discloses a window raising device comprising cables 3 and 4, a support plate 11, a drum 1 with cable grooves 2 on its periphery rotatably mounted on the support plate, a cover 12 affixed to the support plate over the drum, an inner tunnel 16 defined between the lower portion of the cover and the support plate, a hooking opening 21 in the base of the drum for receiving a pellet 19 on the end of cable 4 and a hooking opening 22 in the upper end of the drum for receiving a pellet 23 on the end of cable 3. Of particular relevance in this appeal is the manner in which the cable 4 is connected to the drum:

[t]he second cable 4 is manually inserted around the drum 1 by placing its end pellet 19 in the entrance 16a of the tunnel 16 (on the right in FIGS. 3 and 4). Then, while holding the cable 4, the operator pushes the cable 4 into the tunnel 16, the wall of which and the flexibility of the cable 4 effectively guide the pellet 19 around the drum 1 inside the cover 12 until the pellet 19 reappears at the outlet 16b of the tunnel 16 after having traveled through about half a circumference (FIGS. 5 and 6). The operator then manually inserts the pellet 19 in the corresponding opening 21 and the second cable 4 is then wound one turn around the drum 1 [column 4, lines 27 through 38].

In the examiner's view (see page 4 in the answer), Pages does not respond to the limitations in independent claim 20

requiring the second end of the drum to include a flange extending radially outward further than the grooves, with the flange including an opening extending axially through the flange, or to the corresponding but broader limitations in independent claim 36 requiring the drum to have a radially extending flange including an opening at one end of the drum. To overcome these perceived deficiencies, the examiner turns to Sessa.

Sessa discloses a window raising device which differs from that disclosed by Pages in several significant respects. The Sessa device does include, however, a grooved drum 10 having at its lower end a radially extending flange 13 with an opening at 12 for fastening a cable or wire 11 to the drum.

In proposing to combine Pages and Sessa to reject independent claims 20 and 36, the examiner submits that it would have been obvious "to provide Pages with a radially extending flange having an opening 12, as disclosed by Sessa '060, to improve the rotational stability of the drum as it rotates and to provide a more secure connection of the end of the cable with the flange" (answer, page 5).

The collective teachings of Pages and Sessa, however, provide no reasonable indication that the Pages drum needs additional rotational stability or a more secure connection to the cable. The only suggestion to selectively modify this drum

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in view of the disparate drum disclosed by Sessa in the manner advanced by the examiner stems from hindsight knowledge impermissibly derived from the appellant's disclosure.

Accordingly, we shall not sustain the standing 35 U.S.C. § 103(a) rejection of independent claims 20 and 36, and dependent claims 21 through 25, 37, 38 and 41 through 43, as being unpatentable over Pages in view of Sessa.

II. The obviousness-type double patenting rejection of claims 20 through 25, 36 through 38 and 41 through 43 over claims 4 through 6, 8 and 13 in the Pages patent in view of Sessa

To begin with, we note that where it is possible to conduct the broader inquiry permitted by §§ 102 and 103 because a reference (in this case Pages) is prior art, it does not make sense to resort to the narrower inquiry which underlies a double patenting rejection. In re Ornitz, 376 F.2d 330, 334, 153 USPQ 453, 457 (CCPA 1967).

As for its merits, the double patenting rejection is unsound on its face due to the examiner's failure to analyze each of the rejected claims vis-a-vis individual ones of the claims in the Pages patent. On a more substantive level, the rationale for the rejection is similar to that advanced with respect to the § 103(a) rejection and is unpersuasive for like reasons.

Consequently, we shall not sustain the standing obviousness-type double patenting rejection of claims 20 through 25, 36 through 38 and 41 through 43 over claims 4 through 6, 8 and 13 in the Pages patent in view of Sessa.

III. Remand to the examiner

Arguably, the subject matter recited in independent claim 36 is fully met by Pages' disclosure of a vehicle window raiser assembly comprising a cable (4), a winding drum (1) having a body portion with a plurality of grooves (2) that support a portion of the cable for winding, a radially extending flange (the bottom extent of the drum) at one end of the body portion, an opening (21) in the flange, and a hood (12) having a sidewall extending along a portion of the length of the drum body at a first radial dimension and a passage portion having a second, larger radial dimension, with the passage portion and the drum flange cooperating to form a tunnel (16) that guides and supports an end (19) of the cable prior to the end being inserted into the opening in the flange.

On remand, the examiner is directed to reassess the patentability of claim 36 and its depending claims in light of the disclosure of Pages taken alone or in combination with other prior art references, and to enter new rejections of these claims if such are warranted.

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SUMMARY

The decision of the examiner to reject claims 20 through 25, 36 through 38 and 41 through 43 is reversed, and the application is remanded to the examiner for further consideration.

REVERSED AND REMANDED

IRWIN CHARLES COHEN
Administrative Patent Judge

Charles E. Frankfort
CHARLES E. FRANKFORT
Administrative Patent Judge

BOARD OF PATENT
APPEALS
AND
INTERFERENCES

JOHN P. MCQUADE
Administrative Patent Judge

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